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## CULTURE'S OPEN SOURCES

# Copyright and Taboo

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One hundred and fifty years ago, stories were coming from the colonial frontier of natives who believed that twins were birds, that blood bound people together, and that people's fingernails could be used to ensorcel them. The going theory was that non-Europeans were confused. They had a "primitive mentality" which could not clearly distinguish between things which were in fact distinct. Levy-Bruhl (1978) argued that *mentalité primitif* confused nature and culture, humans and inanimate objects, and cause and effect while Frazer (1958) formulated his famous laws of similarity and contagion. The work of both authors—despite their current political incorrectness—marked a genuine step towards the culture concept. Both men based their theories on news from the colonies, from which stories about people in the "savage slot" (Trouillot 1991) were coming in thick and fast. One of the most common and enduring—albeit spurious—of these sorts of tropes revolves around cameras. "The natives" would not allow whites to take their picture because cameras could "steal their souls." The imperial explanation was simple: these people had a "primitive mentality" and confused their soul with their image. Rational Europeans knew better: they could tell the difference between a picture and the thing it depicted. Their thoughts were clear and distinct, freed from the miasma of an earlier, less discerning age.

It may come as a bit of a surprise, then, to consider the events of 8 April 2002 when Tipper Gore gave a speech at American University in Washington DC. During the course of the speech, a student protestor began video-taping Mrs. Gore and was asked to stop. When he refused, a scuffle ensued in which he was handcuffed, led away, and the tape confiscated. Amongst the charges laid against him by the disciplinary committee at AU was possession of stolen property—*by which was meant the image and likeness of Tipper Gore* (Argetsinger 2002).

It is ironic to note that now, nearly a century after The Golden Bough, contemporary thought on intellectual property undertakes contortions eerily similar to the “native point of view” that Frazer and Levy-Bruhl considered their first world compatriots to be above. Don’t get me wrong—I would never tarnish the reputation of the world’s indigenous people by ascribing to them the same level of civilizational development as Tipper Gore. And while I would use many terms to describe the colossal literature on intellectual property, “primitive” and “undeveloped” are not among them. However, I do believe that the cultural underpinnings of American intellectual property law and the more traditionally anthropological literatures on taboo and Melanesian personhood are related. In this paper I will metonymically gloss both these topics under the heading “copyright” and “taboo.” How, I ask, can one shed light on the other, and how can such a combination allow us to understand the cultural forces at play in the Tipper Gore example?

In anthropology, particularly the anthropology of classically “savage slot” locations such as Melanesia, we have a tendency to draw a division between “us” and “them”—“they” have partible personhood (Strathern 1988, but see also her later work such as 1992) and “we” imagine ourselves as “possessive individuals” (MacPherson 1962). Anthropological critiques of American common sense such as Marshall Sahlins’ critique of the “native anthropology of western cosmology” (2000) seek to undermine our assumptions by showing how culturally specific they are—we’re prudish, but they (over in Samoa) are much more open about sex, and so forth. On this account, it’s their *difference* from us that makes the critique powerful.

Here, I’ll argue that copyright and taboo are *alike* because they are both responses to the same existential predicament: the fact that our identities and senses of self are always already rooted in the inevitableness of our bodies even as they exceed our corporeality. In realm of taboo, this troubling confusion is figured in terms of the body while copyright figures this dilemma in terms of an individual’s creative output. In this paper, I’ll compare two ethnographic examples in which the existential issues surrounding copyright and taboo are dealt

with in similar ways. In both massively multiplayer online games (MMOGS) and Melanesian sociality, we see a resolution to the problems raised by the disjuncture of our bodies and our selves. Both instances speak to us about the other. A study of Melanesian sociality helps us imagine ourselves as more than just isolated individuals, even as a study of online games shows us that the objects with which we entangle our subjectivity need not be physical. In both cases, we see an accommodation to the self/body disjuncture that is, perhaps, more satisfactory than that conjured up in the nineteenth-century imagination and American University's punitive actions. I'll begin with taboo.

## Taboo

Taboo, of course, is one of anthropology's classic tropes. While the literature on taboo is wide ranging, I will limit myself here to Valerio Valeri's recent synthetic account of the topic in his magisterial *The Forest of Taboos* (1999). Valeri grounds taboo in the embodied nature of human subjectivity. Human subjects are "symbolically constituted, but necessarily located in the body" and, of course, "the body is not only a substance to be... turned into grist for the symbolic mill, but also a constant source of nonsense undermining the affirmation of sense" (Valeri 1999:111). This "nonsense"—the resisting, inarticulate physical nature of biology—haunts the subject. Thus, Valeri writes, "the body, particularly the constantly moving and transforming body which we experience in its processes of ingestion, excretion, reproduction, transformation, and decay" (1999:112) is the strongest expression of this fact. As a result, "the phenomenon of taboo and the various dangers that motivate it must be apprehended at the points of articulation and confrontation of the subject and the conditions—symbolic and presymbolic—of its existence" (1999:112).

Thus on the one hand, we recognize the immutable rootedness of our selves in our body while on the other we are keenly aware that our bodies are what lawyers refer to as "prior art:" amalgamations of other people's substances—our father's semen, our mother's milk, the meat of the animals we have killed and eaten. And just as the bodies of others have become separated from them so as to become part of ours, bits of our bodies such as fingernails, hair, feces, urine, blood can be separated from us and come into the possession of other people. We have *issues* about all of this—and it is these issues which Valeri takes as central to notions of taboo.

While Valeri sees the flow of identity through the body as a source of anxiety, Marilyn Strathern sees it as the building block of a distinct Melanesian

sociality. She has famously argued that where “the west” sees individuals whose interaction creates social relationships, “Melanesians” see social relationships whose interactions create individuals. To Melanesians, individuals are merely the physical nexus through which relations of consanguinity and affinity run, and people are “partible” in so far as their selves are encapsulated in objects that leave their control and, through circulation, create new relationships. “Relations,” argues Strathern, “are objectified by persons and things being separable or detachable from one another... in this sense, the possibility of producing or creating relationships, of taking some action with respect to them, is itself a precondition to separation or detachment” (1988:178).

Thus Strathern argues that “mediated” exchange such as the flow of items surrounding Kula exchange, “draws on the indigenous image that persons are able to detach parts of themselves in their dealings with others” (1988:192). The circulation of Kula valuables and their entanglement in affinal relationships creates not an anxiety about the self, but the conditions of sociality itself. The complex relationship between a man, his wife, and his affines is maintained over time through prestations of garden produce and kula valuables. In this way, the women’s labor for her husband which is lost to her natal community is compensated for—in fact, the relationship between all three parties is constituted by nothing other than the flow of these prestations themselves.

## Copyright

The exchange of kula valuables and fears of pollution seem, at first, far from issues of intellectual copyright. What, you might ask, has Tipper Gore to do with armshells? But there are similarities. Concepts of copyright rests on the idea that a person’s artistic creations are deeply a part of themselves, despite the physical separation between the body of an artist and the physical artifact—a written score, a poem, a statue, a canvas—that is the result of their creative work. At the heart of the concept of copyright lies the idea that works of art are expressions of the unique subjectivity of their creators.

As Martha Woodmansee (1984) and Mark Rose (1993) have argued, the idea of copyright has particular spatiotemporal coordinates—England and Germany in the eighteenth century. The spread of mass literacy and the proliferation of printing presses forced writers and publishers to seek new ways to defend themselves from those who illegally copied their works. While the philosophical form of this argument is best expressed in Kant’s *Critique of Judgement* (1958) and

was to have [at least until Gadamer's (1992) thorough refutation of an aesthetics of *erlebnis*] a huge influence on aesthetics and philosophy, more down-to-earth arguments were made in legal and public debate. The framing of "the author" as a subject involved "the abstraction of the concept of literary property from the physical book" and was key to "the presentation of this new, immaterial property as no less fixed and certain than any other kind of property" (Rose 1993:7). While laborers (as Boyle 1996 sourly points out) were not seen as having residual property rights in the goods they created for their employers, artists did, because of their unique constitution as creative and inspired subjects. As we say today in American copyright law, it was the idea rather than its expression that was a result of the author's unique subjectivity, and hence he continued to retain control over it. On this account, artistic creation involved capturing a non-corporal part of the author's genius and binding it up with a printed page. While this page circulated out of the author's control, they were still his, and hence he still had a claim to them.

The partibility of the author's personhood underwrote the folk-theory of subjectivity which in turn legitimated copyright. Is this really so different from Melanesia? Compare Woodmansee's assertion that "To ground an author's claim to ownership, it would first be necessary to show that it is *an emanation of his intellect*—an intentional, as opposed to a merely physical object" (1984:50, emphasis added) with Strathern's analysis of the way nurturance mutually implicates subjectivities in Mt. Hagen: "If anything makes things grow in Hagen, it is *a detachable component of the 'mind':* the wife's effort as a matter of her intellectual and emotional commitment towards what she is doing" (Strathern 1988:253, emphasis added). The parallels seem clear.

## Virtual Objects and Deferred Bodies

But how much do the polemics of eighteenth-century Germans have in common with the cultural underpinnings of copyright in America today? Can we, in other words, take historical arguments and apply them unproblematically to the Tipper Gore example? I would argue yes—in fact, one example from the contemporary US demonstrates how fully this issue of partible personhood can be detached from corporeality all together: massively multiplayer on-line videogames.

Computer gaming in the United States is a growing industry rivaling Hollywood in size—total video and computer game sales totaled US\$6.9 billion (IDSA 2004), as compared with Hollywood's US\$8.4 billion dollars (MPAA 2003).

Demographics are changing as well—once the domain of stereotyped geeks, 26% of video game players are women over 18, while only 21% are teenaged boys (Ramirez 2003). Among the most popular new genre in computer gaming are massively multiplayer online games (MMOGS)—high rendered, beautifully detailed virtual worlds of surprising complexity and depth. Companies such as Sony charge a monthly fee for players with internet connections to participate in the world. As a result, games such as *Everquest*, *Starwars Galaxies*, *Secondlife*, *There*, *Final Fantasy XI*, have grown in popularity, and each game hosts literally tens of thousands of players online simultaneously at any one time. In fact, MMOGs have become so popular that those familiar with them have argued that they are not merely games, but complete on-line synthetic worlds. In a definitive survey of the virtual world of Norrath (where *Everquest* is set), for instance, Edward Castronova discovered that twenty percent of all respondents consider themselves denizens of *Everquest* who merely “visit” Earth. Thirty percent spent more time in Norrath than they did working at their jobs (Castronova 2001).

As a result, the most recently designed MMOGs, such as *The Game Neverending*, *Second Life*, and *There*, have jettisoned the typical game-structure of earlier MMOGs (in which, for instance, characters earn points by overcoming obstacles in order to advance in levels) for a more open-ended, goalless environment. Indeed, the companies that run them describe their products as “worlds” rather than “games.” The bullet point advertisements for these games are no longer “kill monsters” or “achieve victory” but (in the case of *Second Life*) to “play, shop, explore, talk, create, [attend] events” (Linden Research n.d.).

The fact that *There.com* lists “shopping” as the second most important activity that can be undertaken in its gameworld is telling. The seriousness with which inhabitants of MMOGs take their synthetic existence is made clear by the economic consequences of their time online. Powerful magic items such as magic swords and armor are highly sought after in games such as *Everquest* for the abilities they give to the players who possess them. As a result, many of these virtual items are sold on sites such as *Ebay* for real world dollars and then, as a result of the contract, transferred to their owner’s online personas. The size of the market is breathtaking—shadow pricing of the marketing of in-game objects reveals that the value of the booty accumulated during play is significant. The average players of *Everquest* earns an hourly “wage” of US\$3.42 and has an annual income of over US\$12,000 and a per capita GNP of US\$2,366 (Castronova 2001). Castronova has estimated that *Everquest* has an economy roughly the size of Russia. In comparison, Papua New Guinea has a per capita GNP of US\$580 (Unicef n.d.).

In the case of Secondlife and There, items are not used to overcome monsters and advance levels but are ends in themselves. Much of these games involve personalizing one's appearance, clothes, and house. In fact, a great deal of life in There and Secondlife involves *making* virtual objects such as clothes, houses, or appliances that can be used or sold to others who wish to use them. Here again we begin to see the theme of the creative genius. "Decorate your dream home or design your own fashion line," says the promotional material on There's website, "The only limit in There is your imagination" (There Inc. n.d.). Second Life offers a similar story: "Create anything you can imagine. Change your appearance to look like anything—an imaginary superhero, a mythical monster, or your own mirror image. Or, change your surroundings. Build your dream home. Make art. Become a world-famous clothing designer. Collaborate with others to build a major civic work—or an entire city. Let your imagination run wild!" (Linden Labs n.d.).

In the case of eighteenth-century copyright, the physicality of the book created a challenge for understanding the original, non-tangible contribution of the author. In the case of MMOGS, the material drops away and the virtual takes over. Nonetheless—or rather, perhaps *because*—of this fact, Linden Labs, the creators of Second Life, recently changed their Terms of Service with subscribers to *retain their intellectual property rights for virtual objects*. "Until now, any content created by users for persistent state worlds, such as EverQuest or Star Wars Galaxies, has essentially become the property of the company developing and hosting the world," said the CEO of Secondlife, Philip Rosedale. "We believe our new policy recognizes the fact that persistent world users are making significant contributions to building these worlds and should be able to both own the content they create and share in the value that is created. The preservation of users' property rights is a necessary step toward the emergence of genuinely real online worlds" (Haughey 2003).

## Conclusion

It may seem odd at first to compare the arguments of Tipper Gore's lawyers with the affinal politics of Massim islanders. But on closer consideration we should see that this is not so. In the case of both Gore and copyright, there is a keen appreciation that one's self is not congruent with one's body. In each case the body—its image in the case of Gore, and the product of its labor, in the case of Melanesia—was key to understanding the rootedness of its personhood. With MMOGs, on the other hand, we see the way in which the physical

object is itself not all important—it is simply the transmission medium for a more intangible and more crucial sense of selfhood and identity.

But there are important differences between Gore's conduct and that of Melanesians and online gamers. As Valeri reminds us, the dispersal of identity beyond the bounds of the body means that others are implicated in our sense of self. In the case of copyright, the triumph of the ideal of the creative author required the suppression of our recognition of the importance of the "prior art" whose product we are, in order to validate the unique status of artistic subjectivity. Seen from the point of view of taboo, then, copyright derives its cultural legitimacy from the strange contradiction that creative output, like hair or fingernails, is at once deeply a part of one's own integral subjectivity, and yet can circulate out of one's own control. The same relations of contiguity and association that leads people to collect the hair of the person they seek to ensorcel underwrites the cultural logic that legitimates the Recording Industry Association of America's attempts to bust down Kazaa.

But in the case of MMOGs and Melanesia, the recognition of this fact, and the necessity of dealing with it in the course of everyday life, has been the spur to develop a sociality which is not afraid to admit what it owes to others. Rather than being seen as a conceptual problem, it is in fact the point of departure for an entire arrangement of licenses and feedings which are attentive to the inevitability of our entanglement. Is it foolish to compare the "real-life" consequences of, say, copyright infringement to the vagaries of the ownership of "virtual" property? Perhaps. But for Melanesians who grow their own food, build their own homes, and chop their own wood for fuel, the lifestyle of first worlders may not seem that removed from that of people who spend time in MMOGS. Citizens of synthetic worlds, after all, do have a body, albeit a deferred one. They still need to eat, sleep, and attend to other needs—indeed, if you're going to live online, you need an extremely good chair, not to mention an ergonomic keyboard. But the "alienation" from "real life" that many associate with synthetic worlds seems less shocking when one considers how removed many first worlders are from the physical work of subsistence. A Melanesian viewpoint helps us see the ways in which self-making involves a steady continuum of both physical and non-physical concerns rather than a bright and clear boundary between "the real world" and "an imaginary one."

And this brings me back to Tipper Gore. Gore's inability to distinguish between herself and her representation is not surprising, given that our legal regime's understanding of what it means to have a textual existence that exceeds one's corporeality is not much more nuanced than simply "stealing



souls.” But people who are living with and through technology—like people who live with and through the animals they hunt, and the food they grow—fashion their own taboos and their own sense of limits. We may always have issues at the places where we stop and the world begins, but how we deal with this lack of limit varies. Although hedged about with taboo and slightly swine-centric, Melanesians have created a lifeway that makes eminent sense of their intimate articulations. Similarly, people who actively design virtual trousers and split-level condos in synthetic worlds are dealing with the complex questions that arise when laws of property—such as copyright—are applied to a virtual world which earlier legislators could hardly have imagined. An analysis of the details of their doings and a comparison of their copings appears to me to be in order.

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